

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

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SHELLEY D. KROHN, Chapter 7 Trustee,

Plaintiff,

v.

EQUITY TITLE, LLC, et al.,

Defendants.

Case No. 2:14-cv-00620-RFB-PAL

ORDER

(Mtn for Svs by Publ'n – Dkt. #30)

This matter is before the court on Plaintiff Shelley D. Krohn, the chapter 7 trustee of the bankruptcy estate of William Walter Plise's, Motion for Extension of Time to Serve Defendants and to Serve Defendants by Publication (Dkt. #30). The Motion is supported by Affidavits of Diligence from Plaintiff's process servers and an Affidavit of Reda M. Hicks, Plaintiff's counsel. The court has considered the Motion and supporting affidavits.

Plaintiff filed the Complaint (Dkt. #1) on April 22, 2014, and began efforts to serve summons on April 25, 2014. Plaintiff served Defendants Equity Title LLC and Robert Evans. *See* Summons Returned Executed (Dkt. ##15, 16). Since April 25, 2014, Plaintiff has attempted to serve Defendants William W. Plise, James L. Moore, and Aquila Management LLC multiple times using local process servers. The Affidavits of Due Diligence from Plaintiff's process servers, attached as Exhibit A to the Motion, aver that on April 30, 2014, a process server Barbara Stinnett attempted service on Plise at 12624 Calistoga Way, Austin, Texas, 78732. The current resident of that home advised that her daughter was renting the home and had moved in approximately six weeks earlier. The process server attempted to confirm this information with the neighbor across the street, but no one answered the door.

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1 Plaintiff's process server Maurice Hicks attempted to serve Plise at 2711 W. Windmill
2 Lane, Las Vegas, Nevada, 89123 on May 6, and May 29, 2014. Mr. Hicks' affidavit represents
3 that the resort manager at the RV park refused to give Mr. Plise's location on the property but
4 confirmed Plise did live there. The affidavit further indicates the community was guard gated,
5 and the guard only granted access to the front office and not the rest of the property without
6 permission of the resident.

7 On May 2, 3, and 5, 2014, Hicks attempted to serve Defendant James L. Moore at 31 Sky
8 Bird Lane, Las Vegas, Nevada, 89135. On May 2, 2014, the guard confirmed Moore was a
9 resident in the gated community and escorted Hicks to the address. No one answered the door on
10 that date, or on the third or the fifth. On May 5, 2014, however, the process server observed
11 lights on in the residence, two cars parked in front of the residence, and two cars parked in the
12 driveway behind the residence.

13 Additionally, the affidavit of counsel represents that counsel contacted Plise's bankruptcy
14 attorney for additional addresses at which Defendants might be served. Further, counsel
15 indicates that Plise is the resident agent for Defendant Aquila Management, LLC. Counsel also
16 searched public records, Westlaw, and LexisNexis, but those searches produced no additional
17 addresses for Defendants.

18 Plaintiff believes Defendants are actively avoiding service, and therefore, requests
19 permission to serve Defendants by publication. In addition, Plaintiff seeks an extension of time
20 to serve the Complaint pursuant to Rule 4(m) of the Federal Rules of Civil Procedure, which
21 mandates the court extend the deadline where good cause is shown. Plaintiff asserts that good
22 cause exists because Defendants are evading service. Plaintiff contends no prejudice will result
23 from the requested extension because the deadlines in this case are stayed pending resolution of
24 the Motion to Dismiss.

25 Rule 4 of the Federal Rules of Civil Procedure governs service of summons, and it
26 mandates that service of process must be made within 120 days of filing the complaint. *See Fed.*
27 *R. Civ. P. 4(m)*. If service of summons and complaint is not made in that time, the Rule
28 provides:

the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period.

Fed. R. Civ. P. 4(m).

Plaintiff's complaint was filed on April 22, 2014. Thus, Plaintiff must have served process no later than August 20, 2014, the date the Motion was filed, in compliance with Rule 4(m) of the Federal Rules of Civil Procedure.

II. Request for Service by Publication.

Rule 4(e)(1) of the Federal Rules of Civil Procedure allows for service upon individuals within the United States by "following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made." *Id.* In Nevada, NRCP 4 governs service of process. Parties are required to personally serve summons and the complaint upon a defendant; however, when personal service proves impossible, NRCP 4(e)(1)(i) provides that a party may move for service by publication when the opposing party "resides out of the state, or has departed from the state, or cannot, after due diligence be found within the state, or conceals himself to avoid the service of summons." *Id.*

A party seeking service by publication must seek leave of court by filing an affidavit demonstrating its due diligence in attempting to personally serve the defendant. *See* NRCP 4(e)(1)(i). A party seeking service by publication must seek leave of court by filing an affidavit demonstrating its due diligence in attempting to personally serve the defendant. There are several key factors Nevada courts look to in evaluating a party's due diligence in effecting service. Nevada courts principally consider the number of attempts made by a plaintiff to serve a defendant at his or her residence and other methods of locating defendants, such as consulting public directories and family members. *See Price v. Dunn*, 787 P.2d 785, 786-7 (Nev. 1990, *overruled on other grounds by NC-DSH, Inc.*, 218 P.3d 853, 862 (Nev. 2009); *Abreu v. Gilmer*, 985 P.2d 746, 747 (Nev. 1999); *McNair v. Rivera*, 874 P.2d 1240, 1241 (Nev. 1994).

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1 In *Price*, the Nevada Supreme Court found service by publication was not warranted,
2 stating “where other reasonable methods exist for locating the whereabouts of a defendant,
3 plaintiff should exercise those methods.” 787 P.2d at 786-7. There, the plaintiff contacted the
4 defendant’s stepmother, and upon hearing that the defendant lived out of state, moved for service
5 by publication. *Id.* at 105. The *Price* court held that, “although [plaintiff’s] affidavit technically
6 complies with NRCP 4(e)(1)(i), her actual efforts, as a matter of law, fall short of the due
7 diligence requirement to the extent of depriving [defendant] of his fundamental right to due
8 process.” *Id.* On the other hand, in *Abreu*, the Nevada Supreme Court determined that plaintiff
9 exercised due diligence in attempting service and could resort to service by publication. 985
10 P.2d at 747. There, the plaintiff had made attempted to serve the defendant at his possible
11 address on three occasions and had consulted telephone company directories to locate the
12 defendant. *Id.*

13 Here, Plaintiff attempted to serve Plise and Aquila Management, LLC, on three occasions
14 at two addresses—one in Nevada and one in Texas. Plaintiff attempted to serve Moore on three
15 occasions at one address. Plaintiff represents it contacted Plise’s bankruptcy attorney for
16 additional addresses. In addition, Plaintiff conducted searches in Westlaw, LexisNexis, and
17 public record to find alternate addresses for these Defendants without success. Plaintiff has not
18 specified what public records they searched, or whether they searched them in Nevada, Texas, or
19 both. Plaintiff was informed that Plise resided in a gated community but was continually denied
20 access to serve him there.

21 With respect to Plise and Aquila Management, LLC, NRS 14.090(1)(a) governs. It
22 provides that if a person resides in a place where access is not reasonably available except
23 through a gate, and the guard denies access to the residence, that person may be lawfully served
24 with any legal process by leaving a copy of the summonses and Complaint with the guard. NRS
25 14.090(1)(a). With respect to Moore, the court does not find three attempts to serve him with
26 process at one address over a three-day period qualifies as due diligence. Further, the court has
27 no information concerning the efforts made to search public records to locate alternative
28 addresses for this Defendant.

IT IS ORDERED that the Motion to Serve (Dkt. #30) is GRANTED IN PART and DENIED IN PART as follows:

- Dated this 6th day of October, 2014.

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